

ENTERED

August 09, 2022

Nathan Ochsner, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

JABRI J MCCULLOUGH,

Plaintiff,

VS.

PATRICK O'DANIEL, *et al.*,

Defendants.

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CIVIL ACTION NO. 2:21-CV-00176

ORDER ADOPTING MEMORANDUM & RECOMMENDATION

Before the Court is Magistrate Judge Julie Hampton's Memorandum and Recommendation (M&R), (D.E. 19). The M&R recommends that Defendants Patrick O'Daniel, Bryan Collier, and Jerry Sanchez's motion to dismiss (D.E. 17), filed pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6), be granted in part and denied in part. (D.E. 19, p. 22).

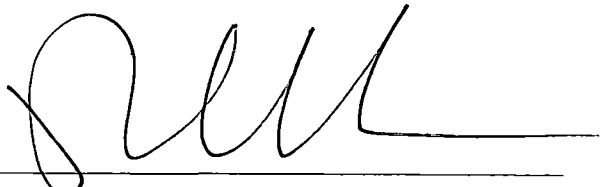
The parties were provided proper notice of, and the opportunity to object to, the Magistrate Judge's M&R. *See* 28 U.S.C. § 636(b)(1); FED. R. CIV. P. 72(b); General Order No. 2002-13. No objection has been filed. When no timely objection has been filed, the district court need only determine whether the Magistrate Judge's M&R is clearly erroneous or contrary to law. *United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir. 1989) (per curiam); *Powell v. Litton Loan Servicing, LP*, No. CIV. A. H-14-2700, 2015 WL 3823141, at *1 (S.D. Tex. June 18, 2015) (Harmon, J.).

Having carefully reviewed the proposed findings and conclusions of the Magistrate Judge, the filings of the parties, the record, and the applicable law, and finding that the M&R is not clearly erroneous or contrary to law, the Court **ADOPTS** the M&R in its entirety. (D.E. 19).

Accordingly, the Court **GRANTS in part** and **DENIES in part** Defendants' Motion to Dismiss (D.E. 17).

- (1) Defendants' motion to dismiss (D.E. 17) is **GRANTED** to the extent that:
 - a. Plaintiff's claims for money damages against Defendants in their official capacities are **DISMISSED without prejudice** as barred by the Eleventh Amendment;
 - b. Plaintiff's § 1983 claims against O'Daniel and Sanchez are **DISMISSED without prejudice** as barred by the Eleventh Amendment; and
 - c. Plaintiff's due process claims against Defendants in their individual and official capacities are **DISMISSED with prejudice** for failure to state a claim for relief and/or on qualified immunity grounds.
- (2) Defendants' motion to dismiss (D.E. 17) is **DENIED** to the extent that:
 - a. Plaintiff's claims against Collier in his official capacity are not barred by the Eleventh Amendment; and
 - b. Defendants rely on the *Parratt/Hudson* doctrine as a basis for dismissal of Plaintiff's claims.
- (3) Plaintiff's First Amendment claim against Defendants in their individual and official capacities are **DISMISSED** pursuant to 28 U.S.C. § 1915(e)(2)(B).
- (4) To the extent Plaintiff's response is construed as a motion to amend his complaint by adding state law claims, the Court **DENIES** such motion to amend as futile.

SO ORDERED.



DAVID S. MORALES
UNITED STATES DISTRICT JUDGE

Dated: Corpus Christi, Texas
August 8th, 2022